

REMARKS

Claim 13 is objected to based on an informality. Claims 1-4, 7, 8 and 10 stand rejected under 35 USC 102(b) as being anticipated by Gamache, Jr. et al. (US 1,224,735). Claims 1, 3, 4, 7-9, 14 and 15 also stand rejected under 35 US 102(b) as being anticipated by Grant (US 61,417). Claim 2 stands rejected under 35 USC 102(b) as being anticipated by Rademaker et al. (US 5,397,312). Claims 5, 6 and 13 stand rejected under 35 USC 103(a) as being obvious in view of Gamache, Jr. et al. Claim 12 stands rejected under 35 USC 103(a) as being unpatentable over Gamache, Jr. et al. in view of Paul et al. (US 5,158,535). Claim 11 stands rejected under 35 USC 103(a) as being unpatentable over Grant. The pending Office Action dated August 3, 2005 has been carefully considered and reconsideration of the application is respectfully requested in view of the amendments and arguments submitted herewith.

Independent claims 1 and 3 have been amended more clearly to state that the passage extends through the gripping portion and through the barrel and that consequently the ejector, which in claims 1 and 3 must be flexible, also extends through the gripping portion and through the barrel. Claims 1 and 3 now also emphasize that the flexible ejector must be able to follow the curvature of the passage.

Independent claim 2 and dependent claim 4 have been amended to delete references to penile shapes, now merely stating that the barrel is roughly triangular in transverse cross-section, thereby eliminating any difficulty in interpreting these claims.

All of the amendments draw clear support from the specification as filed, e.g., page 4, second paragraph and the drawings. The amendments to the claims clearly overcome any basis for the rejections under Sections 102 and 103, as discussed below.

Objection to Claim 13

Following the order of the office action and addressing claim 13 first, claim 13 is objected to because the “gripping surfaces” allegedly lack proper antecedent basis. This objection is however not clear to the Applicant. Claim 13, as previously presented, clearly states that the body defines gripping surfaces whereafter the claim continues to refer to “the gripping surfaces”. Claim 13 thus clearly and consistently uses the term “gripping surfaces.”

Further, the specification employs the term “gripping surfaces,” such as (for example) at page 6, third paragraph. Reconsideration of this objection is thus respectfully requested.

Rejections Based on Gamache Jr. et. al

Rejection of Claims 1 and 3

In regard to claims 1 and 3, the Examiner has argued that Gamache, Jr. et al. discloses a device comprising an elongate body 21/25 having a gripping portion 25, a straight barrel 21, a passage 29 and a plunger 25. According to the office action, the passage 29 is curved in the gripping portion, has an outlet and is linear in the barrel portion and consequently the device of Gamache, Jr. et al. anticipates the invention as claimed in claims 1 and 3. The Applicant respectfully but strongly disagrees with the Examiner for at least the following reasons.

Claims 1 and 3 clearly require the device of the invention to have an elongate body and a separate (flexible) ejector or plunger. The elongate body includes a gripping portion and an elongate straight barrel extending from the gripping portion, with a passage extending through the gripping portion and through the barrel. The flexible ejector or plunger is slidably located in the passage and thus also extends through the gripping portion and through the barrel.

The device of Gamache, Jr. et al. does have a separate elongate body 20 and a separate ejector or plunger 25. The body 20 has a sleeved end 21 and a curved top-shank-end 23 which is preferably provided with the loop 24. Assuming for the sake of argument, sleeved end 21 can be considered to be equivalent in form and function to the straight barrel of claims 1 and 3 and the top-shank-end 23 can be considered to be the closest equivalent to the gripping portion of the body of the device of claims 1 and 3. Both the barrel and gripping portion thus form part of the elongate body, as required by claims 1 and 3.

When thus viewed in this way, the sleeved end 21 defines a passage, configured to receive a solid object or medicament or tampon. But claims 1 and 3 require the passage to extend through the gripping portion and through the barrel with a portion of the passage in the gripping portion being curved in the longitudinal direction of the passage and a portion of the passage located in the barrel being linear. Furthermore, the flexible ejector or plunger of the device of claims 1 and 3 is required to be slidably located in the passage. The only

portion of the device of Gamache, Jr. et al. which could realistically be considered to be a passage similar to the passage of the device of claims 1 and 3, is the interior of the sleeved end 21 within which the tampon is located. This passage is however (i) linear and free of curvatures, (ii) extends only through the barrel (the guide 20) and not through the gripping portion, (iii) does not have a portion located in the gripping portion which is curved in the longitudinal direction and (iv) does not contain a flexible ejector or plunger which also extends through the gripping portion and through the barrel.

Further, the ejector or plunger 25 of the device of Gamache, Jr. et al. is stated to preferably be of hard rubber. Therefore Gamache, Jr. et al does not teach a device that is flexible. There is no need for Gamache's tampon holder 25 to be flexible, as the passage defined by the sleeved end 21 is straight. It is also worth noting that in use the sleeved end 21 is pulled back over the tampon holder 25 and, taking into consideration the configuration of the top-shank-end 23 and the tampon holder 25, it is probable that the top-shank-end 23 will bend slightly, if necessary, when moving back over (or underneath) the tampon holder 25.

Gamache's hollow interior 29 of the tampon holder or plunger 25 identified in the office action as corresponding to the passage of the device of claims 1 and 3 clearly does not constitute the structure of the passage that is recited claims 1 and 3. The passage 29 is simply the hollow interior of the tampon holder 25, and may in fact be done away with when the tampon holder 25 is solid as shown in Figure 16. The hollow interior 29 does not extend through the gripping portion (the top-shank-end 23) but passes underneath or over it (see for example Figures 1 and 12) and the hollow interior 29 does not have an outlet at a free end of the barrel (the sleeved end 21) through which a solid object or medicament or tampon can be pushed by means of the plunger. There is no portion of the hollow interior 29 located in the gripping portion (curved top-shank-end 23) and consequently the elongate body of the device of Gamache, Jr. et al. does not have a passage with a portion located in the gripping portion being curved in the longitudinal direction of the passage.

Furthermore, importantly, the hollow interior 29 is not associated in any way whatsoever with the elongate body which defines the gripping portion (curved top-shank-end 23) and the elongate straight barrel (the sleeved end 21) and it thus does not make any sense to view the hollow interior 29 of the plunger 25 as the passage of the elongate body 20. In

this regard, the office action appears to impermissibly interpret the tampon holder 25 as forming part of the elongate body (see reference to elongate body 21/25 in paragraph 5 of the Office Action) but also as a plunger. Thus, based on the interpretation that the tampon holder 25 forms part of the body 21, the office action equates the hollow interior 29 of the plunger 25 with the passage of the elongate body of claims 1 and 3; however, as previously stated, the elongate body and the flexible ejector or plunger of claims 1 and 3 are clearly separate components with the plunger fitting into the passage defined by the elongate body.

Claims 1 and 3 clearly define the parts and features of the device of the invention and their relationship to each other in a manner that is neither taught nor suggested by Gamache Jr. et al, and Applicant thus respectfully submits that the device of claims 1 and 3 is not anticipated by Gamache, Jr. et al.

Rejection of Claim 2

When the hollow interior of the sleeved end 21 of the device of Gamache, Jr. et al is correctly viewed as the passage of the device of Gamache, Jr. et al., it is clear that Gamache, Jr. et al. does not disclose a passage having a portion thereof spaced from its outlet which is curved in the longitudinal direction of the passage and, within which passage a plunger is received, as required by claim 2. Furthermore, it is also a requirement of claim 2, that the barrel must be roughly triangular in transverse cross-section (thus mimicking the triangular transverse cross-section of the shaft of a penis caused by the two corpora cavernosae surmounting the urethra). This feature is also not disclosed by Gamache, Jr. et al. and claim 2 is thus clearly also patentable in view of Gamache, Jr. et al.

Rejection of Dependent Claims

Claim 4 includes the same limitation that the barrel must be roughly triangular in transverse cross-section as is present in claim 2 and the arguments presented in respect of claim 2 are thus also applicable to claim 4.

In regard to claim 8, the Examiner has argued that the passage 29 of Gamache, Jr. et al. includes a chamber 36 for receiving the medicament, as required by claim 8. As previously shown, however, the hollow interior 29 of Gamache, Jr. et al is not equivalent to

or does not correspond to the passage of the device of claim 8. Furthermore, the inside housing 36 is associated with the sleeved end 21 and not with the tampon holder or plunger 25. The inside housing 36 of the guide member 20 can however correctly be viewed as a medicament or object chamber of the passage defined by the sleeved end 21. Thus, even if the feature of claim 8 viewed as being disclosed by Gamache, Jr. et al., this only reinforces the Applicant's arguments that the features of the claims 1, 2 and 3 are not disclosed by Gamache, Jr. et al. and in particular that the hollow interior 29 of the tampon holder 25 of Gamache, Jr. et al. can not be equated with the passage of the elongate body of claims 1, 2 and 3.

Claims 5 and 6 stand rejected under 35 USC 103(a) as being unpatentable over Gamache, Jr. et al. This rejection is based on the interpretation that the hollow interior of the tampon holder 25 of the device of Gamache, Jr. et al. is equivalent to or corresponds to the passage of the device of the present invention, but ignores the portions of the claims setting out the relationship between the parts and features of the device of the invention. As this is however clearly not the case, as shown hereinbefore (in short, as the plunger 25 can not define its own passage within which itself is located), Gamache, Jr. et al. neither teaches nor suggests that a centrally disposed longitudinal axis of the barrel and a centrally disposed axis through the inlet of the passage are at an obtuse angle relative to one another, or that they should be relative to one another at the obtuse angles specified in claims 5 and 6. When the device of Gamache, Jr. et al. is correctly interpreted so that the hollow interior of the sleeved end 21 is the only passage within which the plunger is slidably located, it is clear that the passage is linear and that centrally disposed longitudinal axes through the inlet and the outlet of the passage are aligned.

As previously explained, the body of the device of Gamache, Jr. et al. comprises the sleeved end 21 and the curved top-shank-end 23, with the tampon holder 25 being a separate component which slides into the hollow interior of the sleeved end 21 (in fact, the sleeved end 21 is pulled back over the plunger 25 and the plunger 25 is not pushed into the sleeved end 21). The body of the device of Gamache, Jr. et al. thus does not define gripping surfaces such that the body can be gripped between a thumb, an index finger and a middle finger of one hand of a user. Instead, the device of Gamache, Jr. et al. is gripped by gripping the body and the plunger, with the user's thumb engaging either the body or the plunger, depending on

whether the device has the configuration shown in Figure 1 or the configuration shown in Figure 12. The features of claim 13 are thus clearly neither anticipated, nor rendered obvious, by the disclosure of Gamache, Jr. et al.

Rejections Based on Grant

Rejections of Claims 1 and 3

Claims 1 and 3 stand rejected as being disclosed by Grant. The pessary director of Grant does not teach or suggest the structure recited in either claim 1 or claim 3. Contrary to the statement in the office action, the “longitudinal direction” of the passage cannot be defined in any arbitrary location, but rather the term “longitudinal” must be given its ordinary meaning: “placed or running lengthwise” (“longitudinal.” *Merriam-Webster Online Dictionary*. 2006. <http://www.merriam-webster.com>) (4 January 2006)) or the like.

Moreover, the office action indicates that the “barrel” of Grant is straight. The “longitudinal direction” of the passage should be interpreted to be the direction of the passage itself, which is the clear and ordinary meaning of the words. In as far as it can be argued that the device of Grant defines a passage, the passage is clearly not curved.

The device of Grant furthermore does not have a flexible ejector which is able to follow the curvature of the passage. The features of claims 1 and 3 are thus neither taught or suggested by Grant.

Rejections of Dependent Claims

Regarding claim 4, the two sections of the device of Grant, when placed edge and edge together, does not define a barrel which is roughly triangular in transverse cross-section but instead forms “a complete tube, or nearly so”. Grant thus clearly also does not disclose the feature of present claim 4.

Claim 14 requires the body of the device to be monolithic. The term “monolithic” is defined in Merriam-Webster as “formed or carved from a single block ...” or “constituting one massive undifferentiated whole ...”. The body of the pessary director of Grant comprises two half-pipe sections hingedly attached to one another. The body of the pessary device of Grant is thus without doubt not monolithic, in the sense of being integrally molded (see the second paragraph on page 7 of the specification of the present application).

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PATENT
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PROCEDURE PURSUANT TO
37 CFR § 1.116

Claim 11 stands rejected under 35 USC 103(a) as being unpatentable over Grant. The office action states that the edges of the barrel of the device of Grant may be pressed together and therefore that they must be flexible, but Applicant submits that Grant should not be interpreted to disclose this. The two sections (b) of the director of Grant are provided with ear pieces by which they are hung or pivoted together so that they can be opened and closed upon each other at their ends (c). The device of Grant thus has a hinged action and there is no mention or suggestion of flexibility in the disclosure of Grant. Grant does not give flexibility any thought and it thus can not be stated that it would have been obvious to one of ordinary skill in the art, in view of Grant, to make the barrel from a material having a Shore A hardness between 40 and 80.

Rejections Based on Rademaker

Claim 2 has been rejected under 35 USC 102(b) as being anticipated by Rademaker et al. (US 5,397,312). Applicant notes that in the Office Action mailed February 22, 2005, the Examiner rejected claim 2 under 35 USC 103(a) as being unpatentable over Rademaker et al. in view of KenKnight (US 5,314,464). Applicant submits that the amendments in the response dated May 23, 2005, should not justify reconsideration of the determination that Rademaker et al. is not anticipatory. For example, the prior office action states that "Rademaker et al. do not disclose that the elongate barrel is penile-shaped or roughly triangular in shape".(Office Action, page 7, para. 6, February 22, 2005).

Even though Applicant believes that the first determination regarding the disclosure of Rademaker et al. is correct, Applicant has amended claim 2 clearly to state that the barrel is roughly triangular in transverse cross-section. This feature is neither disclosed nor suggested by Rademaker et al., either alone or in combination with any other prior art document of record, and the Applicant submits that claim 2 is patentable over Rademaker et al.


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CONCLUSION

In view of the above, all claims presently of record are believed to be patentably distinguishable from the cited art. Thus, all rejections of record are believed to have been overcome and the application is believed to be in allowable form. An early Notice of Allowability is earnestly solicited and is believed to be warranted.

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